

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

SYNOPSIS REPORT

Decisions Issued in April 2014

The Board's monthly reports are intended to assist public employers covered by a grievance procedure to monitor significant personnel-related matters which came before the Grievance Board, and to ascertain whether any personnel policies need to be reviewed, revised or enforced. W. Va. Code §18-29-11(1992). Each report contains summaries of all decisions issued during the immediately preceding month.

If you have any comments or suggestions about the monthly report, please send an e-mail to wvgb@wv.gov.

NOTICE: These synopses in no way constitute an official opinion or comment by the Grievance Board or its administrative law judges on the holdings in the cases. They are intended to serve as an information and research tool only.

TOPICAL INDEX
HIGHER EDUCATION EMPLOYEES

<u>KEYWORDS:</u>	Discrimination; reprisal; retaliation; arbitrary and capricious
<u>CASE STYLE:</u>	<u>Olson v. Mountwest Community and Technical College/ AND</u> DOCKET NO. 2013-0267-MCTC (4/16/2014)
<u>PRIMARY ISSUES:</u>	Whether Grievant proved her claims of reprisal and discrimination by a preponderance of the evidence, and whether Grievant proved that Respondent's decision to prohibit her from teaching the COL 101 course was arbitrary and capricious.
<u>SUMMARY:</u>	Grievant is employed by Respondent as the Instructional Specialist-Coordinator of Peer Tutoring. In advance of the Fall 2012 semester, Respondent's president decided that only full-load teaching faculty members would teach the COL 101 course taught on campus that semester. Grievant, who is not a full-load teaching faculty member, had been assigned to teach COL 101, as reflected on the course schedules. However, on August 24, 2012, Grievant was advised by her supervisors that she would not be allowed to teach the course, which was to start on Monday, August 27, 2012. Grievant asserts that the decision to prohibit her from teaching the course was reprisal for filing a prior grievance. Grievant asserts that Respondent's decision was arbitrary and capricious, and she raises a claim of discrimination. Respondent denies all of Grievant's claims. Grievant has failed to prove her claims by a preponderance of the evidence. Therefore, the grievance is denied.

KEYWORDS: Tenure-Track Faculty Member; enrollment; retention; arbitrary and capricious

CASE STYLE: ibn Hyman v. West Virginia State University
DOCKET NO. 2013-1529-WVSU (4/4/2014)

PRIMARY ISSUES: Whether Grievant established that Respondent's decision not to renew his contract as a tenure-track faculty was arbitrary and capricious or without factual basis.

SUMMARY: Grievant challenges WVSU's decision not to renew his contract as a tenure-track faculty member. Grievant claims Respondent's decision of non-reappointment is not in compliance with numerous procedural rules governing the reduction of faculty in an academic program. Academic administrators, in making personnel decisions, are accorded considerable discretion in matters as faculty retention or promotion.
There is a difference between a formal termination of a faculty member's position due to a reduction and the simple decision not to renew a non-tenured faculty member. Grievant did not establish herein that Respondent's nonrenewal of his contract was arbitrary and capricious, not founded on a factual basis, or done as a form of harassment and retaliation. Sound business reasons are not arbitrary or capricious justification. This grievance is DENIED.

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COUNTY BOARDS OF EDUCATION
PROFESSIONAL PERSONNEL

<u>KEYWORDS:</u>	Immorality; insubordination; policy violations; electronic communication with a student; inappropriate behavior; immoral conduct willful neglect of duty; mitigation
<u>CASE STYLE:</u>	<u>Cooper v. Raleigh County Board of Education</u> DOCKET NO. 2014-0028-RaIED (4/30/2014)
<u>PRIMARY ISSUES:</u>	Whether Respondent proved that Grievant's conduct in encouraging, engaging in, and covering up, an inappropriate relationship with a student and disregard of the orders of school administration was immoral, insubordinate, or a willful neglect of duty.
<u>SUMMARY:</u>	Grievant was employed by Respondent as a teacher and coach at Woodrow Wilson High School and as a coach at Independence High School. Respondent dismissed Grievant from all of his positions after discovering Grievant was engaged in an inappropriate relationship with a student. Respondent proved that Grievant's relationship with the student, while not sexual, was immoral, that Grievant's violation of specific policy was both insubordinate and a willful neglect of duty, and that Grievant's defiance of administration orders was insubordinate. Grievant failed to prove that mitigation of his dismissal was warranted. Accordingly, the grievance is denied.

KEYWORDS: Certification; Qualifications; Bumping; Transfer; Arbitrary and Capricious

CASE STYLE: King v. Kanawha County Board of Education
DOCKET NO. 2013-1675-KanED (4/24/2014)

PRIMARY ISSUES: Whether Grievant established that the decision to transfer her from a French position at St. Albans High School to a English position at a middle school was unreasonable or subject to a difference of opinion.

SUMMARY: Grievant protest the transfer from her position as a French teacher at St. Albans High School to teaching English in middle school. Grievant contends Respondent violated West Virginia Board of Education policies as well as applicable West Virginia Code during the course of events. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer and promotion of school personnel. It was imperative to determine whether the Board abused its considerable discretion in this personnel matter, or if its decision was arbitrary and capricious. There was some confusion in this case as to whether the personnel actions affecting Grievant constituted a “reduction in force” or was simply a transfer of personnel. There is no evidence in the record that a reduction in the number of professional employees employed by Respondent occurred as a result of the personnel actions of this matter. Grievant, among other arguments, suggests that Respondent’s actions stand on the precipice of an absurd result. Nevertheless, Grievant did not establish, by a preponderance of the evidence, that the decision to transfer her from a French position at St. Albans High Schools to a English position at a middle school was implausible, unreasonable or not subject to a difference of opinion. This grievance is DENIED.

KEYWORDS: Pay raise; pre-employment work experience; multi-classification; job responsibilities

CASE STYLE: Nuzum v. Harrison County Board of Education
DOCKET NO. 2013-0214-HarED (4/14/2014)

PRIMARY ISSUES: Whether Grievant proved that her assignments and duties were sufficiently similar to another employee to trigger the uniformity requirements.

SUMMARY: Grievant assumed the position of Secretary III-A/Accountant III/Auditor on July 1, 2012, with Respondent. Grievant seeks credit, for pay purposes, with time she spent working for a bank prior to November of 1981. Grievant bases entitlement to the pre-employment service credit upon the fact that another like-classified employee received credit, for pay purposes, with time she spent working for other employers before she came to work for the Respondent. Because the only matter argued at level three was credit for pre-employment work experience, Grievant is deemed to have abandoned the numerous other claims asserted in her original grievance form. Grievant cannot base a uniformity claim upon a comparison to a co-worker who was employed by the Respondent prior to 1984. In addition, the record demonstrated that the co-worker and Grievant did not perform like assignments and duties.

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COUNTY BOARDS OF EDUCATION
SERVICE PERSONNEL

<u>KEYWORDS:</u>	Job Posting; Job Title; Qualifications; Hiring Process; Substitute Employee; Competency Test; Electrician License
<u>CASE STYLE:</u>	<u>Ward, et al. v. Nicholas County Board of Education</u> DOCKET NO. 2013-2224-CONS (4/1/2014)
<u>PRIMARY ISSUES:</u>	Whether the grievants lacked standing and whether either of the grievants were entitled to instatement into the position in question.
<u>SUMMARY:</u>	Grievants grieved their non-selection for an Electrician II position. Grievant Ward, a substitute, had standing to grieve his non-selection for a regular position. Both at the time of posting and at the time the position was required to be filled, Grievant Ward was the only qualified applicant, and was entitled to the award of the position. Accordingly, the grievance is granted in part and denied in part.

<u>KEYWORDS:</u>	Worksite; Travel Policy; Compensation; Travel Time; Personal Vehicle; Policy Violation; Mileage
<u>CASE STYLE:</u>	<u>Hill v. Mercer County Board of Education</u> DOCKET NO. 2014-0139-MerED (4/10/2014)
<u>PRIMARY ISSUES:</u>	Whether Grievant proved by a preponderance of the evidence that he was entitled to reimbursement for travel expenses when he drove his personal vehicle during the summer of 2013.
<u>SUMMARY:</u>	Grievant claims entitlement for reimbursement mileage he incurred in traveling to a summer job. Grievant was required to report to two work sites but only one on any particular day. Grievant's travel to each work site was no more than standard commuting time which is not compensable under Respondent's mileage reimbursement policy. The grievance is DENIED.

KEYWORDS: Classification; Accounts Payable Supervisor; Primary Responsibility; Duties

CASE STYLE: Williams v. Raleigh County Board of Education

DOCKET NO. 2013-1137-RaLED (4/7/2014)

PRIMARY ISSUES: Whether Grievant proved by a preponderance of the evidence that she is entitled to hold the classification title of Accounts Payable Supervisor.

SUMMARY: Grievant is employed by Respondent as a Secretary III/Accountant III in the purchasing department. Grievant asserts that she has primary responsibility for the accounts payable function; therefore, she is entitled to the classification title Accounts Payable Supervisor. Respondent denies Grievant's claims and argues that she is not entitled to the Accounts Payable Supervisor classification. The evidence presented establishes that Grievant performs accounts payable functions in her position. However, Grievant failed to prove by a preponderance of the evidence that she has "primary responsibility" for the accounts payable function, which is required for the classification. Therefore, the grievance is denied.

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STATE EMPLOYEES

<u>KEYWORDS:</u>	Division of Personnel Classification Specification; Job Content Questionnaire; Job Duties; Additional Duties; Organizational Chart; Reallocation; Arbitrary And Capricious
<u>CASE STYLE:</u>	<u>Bleigh, et al. v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital and Division of Personnel</u> DOCKET NO. 2013-1294-CONS (4/29/2014)
<u>PRIMARY ISSUES:</u>	Whether Grievants demonstrated a significant change in the kind or level of duties and responsibilities to warrant a reallocation.
<u>SUMMARY:</u>	Grievants are employed as Unit Secretaries at the William R. Sharpe, Jr. Hospital where they are classified as Office Assistant 2. Grievants assert that they should be reallocated to Office Assistant 3 because the Hospital gave them a directive to contact job applicants and references. The Division of Personnel reviewed the job position descriptions provided by the Grievants and found that the new job duties fall within the classification specifications for Office Assistant 2. One Grievant has been classified as an Office Assistant 3 since the filing of this grievance. The other Grievants did not demonstrate that their job duties more closely fit with the next higher classification. Grievants did not demonstrate that Respondent abused its discretion by asking them to contact job applicants, schedule interviews, and contact employment references.

KEYWORDS: Suspension; Three Days' Notice of Charges; Response to Charges; Time to Respond

CASE STYLE: Davis v. Regional Jail and Correctional Facility Authority/North Central Regional Jail

DOCKET NO. 2014-0528-MAPS (4/30/2014)

PRIMARY ISSUES: Whether Grievant was prejudiced by Respondent's failure to allow her three working days to respond in writing or in person to the charges that lead to her suspension.

SUMMARY: Grievant was suspended for 24 working hours without pay for failing to ensure that inmates were locked down before taking civilian commissary workers into the inmate area. Except for some minor disagreement with the description of events, Grievant did not contest the charges against her, but contended that she should have been given 10 days to respond to the suspension letter, as is stated in the letter. Grievant did not ask for additional time to respond, and there is no requirement that Grievant be provided 10 days to respond to the notice of suspension. The Division of Personnel's Rules do require that the employee be given a minimum of three working days' notice of the suspension in order to allow a reasonable opportunity to respond in writing or in person to the charges. The suspension letter gave Grievant a specific date to respond, which was several days before the suspension began. Grievant was not given three working days to respond in writing or in person. Grievant was not prejudiced by the failure to allow her three working days to respond to the charges.

<u>KEYWORDS:</u>	Back Pay; Misclassification; Reallocated; Bad Faith; One Year Limitation on Back Pay
<u>CASE STYLE:</u>	<u>Blizzard v. Department of Health and Human Resources/Bureau for Child Support Enforcement and Division of Personnel</u> DOCKET NO. 2013-2054-DHHR (4/17/2014)
<u>PRIMARY ISSUES:</u>	Whether Grievant was entitled to back pay for more than one year prior to the filing of her grievance.
<u>SUMMARY:</u>	Grievant believes she has been working out of classification since at least 2005, and is entitled to back pay to 2005. Grievant's employer conceded that Grievant had been performing the duties of a Child Support Specialist II for some period of time prior to the filing of her grievance, and that she was entitled to back pay for one year preceding the filing of the grievance. Per the statute setting out the grievance procedure, the undersigned is limited to granting back pay beyond one year preceding the filing of a grievance, absent a showing of bad faith, in which case, the award is limited to 18 months. Grievant did not demonstrate that Respondent had acted in bad faith.

<u>KEYWORDS:</u>	Moot; Relief; Dismissal; Resignation; Remedy
<u>CASE STYLE:</u>	<u>McVicker v. Division of Juvenile Services/Kenneth "Honey" Rubenstein Center</u> DOCKET NO. 2014-0155-MAPS (4/14/2014)
<u>PRIMARY ISSUES:</u>	Whether Grievant's resignation before a hearing was held rendered her grievance moot.
<u>SUMMARY:</u>	Grievant voluntarily resigned her employment with Respondent prior to this matter being mediated, or going to a hearing. Grievant does not seek any monetary damages. The only remedies Grievant seeks relate to the workplace environment where she is no longer employed. Accordingly, no relief may be granted to Grievant, and this matter is now moot.

KEYWORDS: Gross Neglect; Poor Customer Service; Resident Neglect; Activities of Daily Living (ADL) Sheets; Hearsay

CASE STYLE: Byrd v. Department of Veterans Assistance
DOCKET NO. 2014-0480-DVA (4/15/2014)

PRIMARY ISSUES: Whether Respondent proved the charges against Grievant and demonstrated good cause for dismissal of Grievant.

SUMMARY: Grievant was dismissed from her employment by Respondent for neglect of residents at the Veterans Nursing Facility and failure to complete the Activities of Daily Living sheets for the residents on September 21, 2013. Respondent demonstrated that Grievant did not complete the Activities of Daily Living sheets as required, which, although very important, was insufficient to justify termination of Grievant's employment. Respondent did not prove that Grievant neglected any of the residents under her care.

KEYWORDS: Agency Work Schedules; Change Work Schedules; Job Description; Weekends; Arbitrary and Capricious

CASE STYLE: Daniels, et al. v. Department of Health and Human Resources/Welch Community Hospital
DOCKET NO. 2013-0599-CONS (4/8/2014)

PRIMARY ISSUES: Whether Grievants proved that Respondent's decision to change their work schedule was arbitrary and capricious.

SUMMARY: Respondent changed the work schedule of Grievants so that they were required to work one weekend out of each eight-week period, like all of the other LPNs employed in Respondent's clinics. Grievance alleged that Respondent's action is arbitrary and capricious because it was not related to a more efficient or effective workplace. Grievance failed to prove that the change of schedules implemented by Respondent was arbitrary and capricious. Accordingly, the grievance is DENIED.

KEYWORDS: Vacancy; Minimum Requirements; Selection Process; Arbitrary and Capricious

CASE STYLE: Marshall v. Division of Highways
DOCKET NO. 2013-1420-DOT (4/4/2014)

PRIMARY ISSUES: Whether Grievant established that Respondent violated its rules or was legally insufficient on posting and filing the job vacancy.

SUMMARY: Grievant failed to meet her burden and demonstrate that Respondent's selection process was flawed. Grievant did not demonstrate that the decision to not select her for the position in question was unlawful or an action that was arbitrary and capricious.